

JAN 17 2006

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHRISTOPHER J. AWBERY,

Defendant - Appellant.

No. 04-30284

D.C. No. CR-03-00175-FVS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Fred L. Van Sickle, District Judge, Presiding

Submitted January 9, 2006**

Before: HUG, O'SCANNLAIN and SILVERMAN, Circuit Judges.

Christopher J. Awbery appeals the 270-month sentence imposed following his guilty plea conviction for conspiracy to distribute more than 500 grams of a

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

mixture containing methamphetamine, in violation of 21 U.S.C. § 846 (Count 1), and possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c) (Count 2).

The district court added two levels to Awbery's base offense level based upon a quantity of drugs not established by his guilty plea nor found by a jury beyond a reasonable doubt. As Awbery preserved his Sixth Amendment challenge to the calculation of the sentencing range based on the quantity of drugs determined by the sentencing judge, he is entitled to a new sentencing hearing under *United States v. Booker*, 543 U.S. 220 (2005). Therefore, we VACATE the sentence imposed by the district court, and REMAND for resentencing consistent with *Booker*. *United States v. Kortgaard*, 425 F.3d 602, 610-11 (9th Cir. 2005).

VACATED and REMANDED.